IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1084 OF 2007

St.Patrick's Town C.H.S.Ltd & Ors. .. Petitioners.
V.
Mr.Frank Victor D'Souza .. Respondents.

Mr.A.S.Desai for the petitioners.
Mr.Umesh Mankapure for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 14TH AUGUST, 2007

P.C.:

1. Heard the learned counsel for the parties.

2. This writ petition is directed against judgments of the courts below, concurrently declaring the respondent as a member of the petitioner-society and holding him to be entitled to get a lease deed in respect of plot No.41 executed in his favour. The petitioner-society has also been directed to execute the lease deed in respect of the said plot and to handover actual and physical possession thereof to the respondent.

3. Mr.Desai, learned counsel for the petitioner at the outset invited my attention to paragraph 14 of the judgment of the Co-operative court so also to the similar observations made by the appellate court and submitted that the courts below have committed manifest error of law by giving advantage of the provisions contained in section 22(2) of the Maharashtra Co-operative Societies Act, 1960, as it stands today,

to the respondent. This provision, he further submitted, was amended in 1986 vide Maharashtra 20 of 1986, and since then it is in force. Insofar as the respondent is concerned, he submitted, his case is covered by the old section 22(2). To be more precise the respondent had applied for membership in September 1981, while amended section 22(2) came into force in 1986 and, therefore, he cannot be deemed to have become member as contemplated by amended section 22(2) of the Act. He then submitted that under Rule 19 of the Maharashtra Co-operative Societies Rules, 1961 there is no resolution of the society admitting the respondent as a member of the society. No other submission was advanced by Mr.Desai.

4. Upon perusal of section 22 (2) of the Act, as it stood prior to the amendment of 1986, it is clear that it provided that if the society did not communicate any decision to the applicant within three months from the date of receipt of his application, such applicant would be deemed to have been "refused admission" as a member of the society. By the amendment of 1986 the words "refused admission" are substituted by the word "admitted". In view thereof, after amendment, under section 22(2) if the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been

"admitted" as a member of the society.

5. With the help of the learned counsel for the parties I have gone through the impugned judgments so also the other material placed on record. It reveals from the documents produced on record, more particularly letter dated 16th September, 1981 addressed to the respondent, receipt No.1588 issued in favour of the respondent, letter dated 6th November, 1981 addressed to the respondent and letter dated 22nd September, 1984 addressed to the respondent, that the respondent was in fact admitted as a member of the society. It further reveals that the respondent had also attended the General Body meetings of the society from 1982 to 1984 and his presence was objected by some of the members for the first time in 1984. It also reveals from the record that the respondent attended the meetings of committees. Thus, it is clear that the courts below have not allowed the application merely relying upon the provisions of section 22(2) of the Act. The evidence on record clearly supports the case of the respondent that he was admitted as a member of the society. The findings recorded by the courts below, in my opinion, are entirely based on the evidence on record which warrant no interference by this court in the exercise of extraordinary jurisdiction of this court under Article 226 of the Constitution of India. In the circumstances this

petition is dismissed.

(D.B.BHOSALE, J.)